IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.287 OF 1998

Smt. Ema Maria de Thomas
Noronha de Menezes, residing at
Gaunkar Vaddo, Batim, Ilhas,
Velha-Goa. ..... Petitioner.

V/s.

(1) State of Goa, by its Chief
Secretary, having Office at
Secretariat, Panaji, Goa.

(2) The Under Secretary,
Department of Urban Development,
Government of Goa, having
Office at Secretariat,
Panaji, Goa.

(3) The Land Acquisition
Officer, Dy. Collector,
(Development), having Office
at Panaji, Goa.

(4) Parkway Avenue Co-operative
Housing Society Limited,
Patto Centre, Panaji, Goa. .... Repondents.

Mr. M.S. Sonak, Advocate for the petitioner.

Mrs. Winnie Coutinho, Govt. Advocate for respondents No.1 to 3.

Mr. Valmiki Menezes, Advocate for respondent No.4.

CORAM : N.N. MHATRE &
P.V. HARDAS, J.

DATE : JANUARY 20, 2004.

ORAL JUDGMENT : (Per HARDAS, J.)

This petition under Article 226 of the Constitution of India has been filed praying for the writ of mandamus or a writ in the nature of mandamus or

suitable order or direction, commanding the respondents to modify the impugned order dated 19.11.1997 and in terms of the modification, to exempt the petitioner from paying occupancy price in respect of the allotment of Plot No.12. During the pendency of this petition, an interim order dated 16.12.1998 came to be passed by this Court while issuing Rule. In the interim order, the petitioner was directed to pay the balance amount of Rs.2,33,488/- to the Society respondent No.4 and the petitioner was also asked to furnish a Bank Guarantee of Rs.2,67,056/- in favour of the third respondent the Land Acquisition Officer. Undisputedly, in pursuance of this interim order the petitioner has paid the said amount to the fourth respondent and has also furnished a Bank Guarantee as directed by this Court. The possession of the said plot has been given to the petitioner and we are informed by the learned Counsel for the petitioner that the petitioner has constructed a compound wall.

2. The facts, in brief, as are necessary for decision of this petition are that the petitioner had entered into agreement for sale on 12.4.1997 with M/s. DESPAMONT for purchase of a plot of land. The petitioner avers that the entire sale consideration had been paid by him and only a formality of the execution of the sale deed had remained. Meanwhile, the first

respondent initiated proceedings for acquisition of land wherein the plot of land agreed to be sold to the petitioner is also situated. The Notification under Section 4 of the Land Acquisition Act was published in the Official Gazette on 18.2.1985. A Declaration under Section 6 of the Act was published on 18.2.1985. An Award has been passed by the L.A.O. on 23.2.1987.

3. Meanwhile, the petitioner and others who were aggrieved by the action of the respondents, preferred various petitions in this Court. The petition preferred by the petitioner, viz. Writ Petition No.9/94 came to be disposed of by Division Bench of this Court along with other 15 petitions by common order dated 20.11.1997. The Division Bench recorded the statement of the learned Counsel for the petitioners appearing therein that in view of an order passed by the State Government dated 19.11.1997, the petitioners had no grievance and, therefore, withdrew the petitions. The Division Bench by the said order permitted the petitioners therein to withdraw the petitions and disposed of the said petitions.

4. The Government Order dated 19.11.1997 states about the acquisition of the land comprising of Chalta Nos.81/6, 96/5, 96/4, 96/3, 96/2, 96/1, 100/2, 100/1(part) and 96/6 situated at Miramar Panaji.

Second para of the said order records that the owners had executed sale deeds in respect of some of the plots, while some plots were about to be sold though agreement for sale was executed. The said para also records the filing of the writ petitions in this Court. It records the undertaking given before the Court in those petitions that as per provisions of Section 31(3) of the Land Acquisition, the Government had agreed that the Collector instead of awarding money compensation shall grant alternate plots of land to the petitioners having a title of the plot as owners (emphasis supplied). Para 3 records that as regards the 33 persons, viz. the persons similarly situated as the petitioner herein, the Government has decided that plots meant for individual housing will be given on formation of a Co-operative Society and accordingly Parkway Avenue Co-operative Housing Society Ltd., duly registered was formed. It also records that 27 persons are members of the Society, which included 9 sale deed holders, 15 non-sale deed holders and 3 money receipt holders. The said order also incorporates, amongst various conditions, conditions at sr. Nos. 12, 13 and 14, which read as under :

> "(12) The Society or member of the Society shall not claim any compensation as apportioned in the Award in respect of sale deed holders.

(13) The Society or members of the Society shall not claim any compensation arising out of the decision of the District Court where the matter has been referred by the Land Acquisition Officer as per the Awards.

(14) After the issue of this order, the Society shall obtain affidavits from all the members incorporating the conditions stipulated at Sr. No.(12) and (13) and submit the same to the Government."

5. The present petition, therefore, came to be filed as annexure to the State Government Order which is filed in the petition at page 107 calls upon the petitioner herein whose name figures at sr. No.4 to pay the occupancy price of Rs.5,00,544/-. The stand of the Government in the two affidavits which have been filed is interesting to note. After issuance of Rule, the Government filed affidavits. In the first affidavit dated 21.9.1998 sworn by one Smt. Angela Menezes, Under Secretary to the Government of Goa, it is stated that the petitioner in view of Clause 13 of the order dated 19.11.1997 was not entitled to claim any compensation arising out of the decision of the District Court where the matter had been referred by the Land Acquisition Officer to the reference Court, which undisputedly is a reference under Section 30 of the Land Acquisition Act. Para 3 states that the petitioner is not entitled to any amount under the Award passed by the District Court. Subsequently, another affidavit dated 4.6.2003 sworn by Shri A.P.

Halarnkar, Dy. Collector (Land Acquisition) came to be filed. In para 2 of the said affidavit, it is stated that the Land Acquisition Officer had already deposited the amount of Rs.2,67,056-66 in the District Court towards the compensation payable to the petitioner. In para 3, it is stated that the petitioner may, therefore approach the District Court for compensation which had been deposited. Subsequently, another affidavit by Shri A. P. Halarnkar, Dy. Collector (Land Acquisition) dated 10.10.2003 came to be filed in which an apology was tendered and the statements made in the earlier petition were sought to be retracted. Reliance was placed on Clauses 13 and 14 of the order of the Government dated 19.11.1997. In para 3, it was urged that since earlier petition had been withdrawn by the petitioner, challenge in the present petition was not maintainable.

6. A perusal of the order dated 19.11.1997 would reveal that this order came to be issued in order to see that the persons like the petitioner as a class and others who were sale deed holders as a class were not prejudiced by the acquisition. This order also came to be issued for the purpose of seeing that the sale deed holders who had a valid sale deeds executed in their names were not required to pay the price of plot of land allotted to the Society. The sale deed

holders were, therefore, entitled to plots of land free of cost in the Society. As regards non-sale deed holders, Clause 13 stated that they shall not be entitled for compensation. This order obviously has to be read along with the annexure, i.e. the list of persons who have been allotted plots and against the allotments, the occupancy price of which had been stated. Undisputedly, the petitioner figures at sr. No.4 in the said annexure.

7. According to us, the withdrawal of the petition earlier, does not come in the way of the decision of the present petition. Admittedly, the petitioner had paid the entire sale consideration as stated in the agreement, to the owners and the developers M/s. DESPAMONT. The amount so paid by the petitioner to the owners has been deposited by the Land Acquisition Officer as compensation payable to the petitioner in the reference pending in the District Court under Section 30 of the Land Acquisition Act. To read Clauses 13 and 14 to mean that the petitioner would not be entitled to claim compensation at all and would still be required to pay the occupancy price would not be in consonance with the plain language of order which is issued. The petitioner would either be entitled to claim compensation and forego his right to purchase the plot or the petitioner would forego the

compensation and be required to pay the difference for the purchase of the plot. The prayer of the petitioner that he be allotted a plot free of cost cannot be granted as the Government Order restricts the same to the persons who are holders of Sale Deed. However, the relief in this case can be moulded in terms of the interim order passed by this Court.

8. By virtue of the interim order passed by this Court, the petitioner had been called upon to pay the difference, i.e. the amount which remained after deduction of the compensation deposited in the Court from the cost of the land now allotted to the petitioner. The petitioner was also called upon to give a Bank Guarantee in respect of the amount of compensation. Therefore, in our considered opinion, the petitioner is entitled to have the amount of compensation payable to him, adjusted in the occupancy price of plot No.12 which is allotted to him by the Government Order dated 19.11.1997. The petitioner would not be entitled to claim the compensation in the reference under Section 30 of the Land Acquisition Act, which is stated to be pending before the District Court. The said amount of compensation which the petitioner is notionally entitled to, would revert back to the Government towards the occupancy price of plot No.12 after the decision of the reference Court. The

petitioner has paid the difference to the fourth respondent and the said difference, in turn, is paid to the Government and thus, as regards the petitioner, the entire occupancy price of plot No.12 has been paid to the Government.

9. It is true that the reference under Section 30 is pending before the District Court and the District Court would then apportion the compensation, however, in the event the owners M/s. DESPAMONT are able to establish before the Court that the petitioner has not paid any amount and thus the compensation which now as per our order stands adjusted towards the occupancy price would in fact be payable to the owners i.e. M/s. DESPAMONT, and in order to safeguard the interest of all parties, we direct that the Bank Guarantee furnished by the petitioner shall be kept alive for a period of three months after decision of the District Court in reference under Section 30 of the L.A.Act and in the event the reference Court holds that the petitioner had either not paid the entire sale consideration or part thereof, the respondent No.3 would be entitled to encash the Bank Guarantee in respect of that amount and adjust it towards the occupancy price. The District Court shall accordingly apportion the amount while deciding the reference under Section 30 of the L.A.Act. The Bank Guarantee shall,

thereafter, be subject to the orders, if any, that would be passed in appeal. The petitioner may, if so advised, participate in the proceedings under Section 30 of the L.A. Act to establish the payment to the owners and his entitlement to the notional compensation.

10. With these directions, Rule issued in this petition is made absolute, with no order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.